APPEAL NO. 010006

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 28, 2000. The hearing officer held that the appellant's (claimant) average weekly wage was $125.00, that she was not injured on _____, in a work-related incident, and that her inability to work after that date was not the result of a compensable injury. The claimant appeals and argues that she in fact sustained serious injury on that date while the respondent (carrier) responds, seeking affirmance. The claimant also complained that she was not allowed to present a witness in her behalf.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in finding that the claimant did not sustain injury during an incident that occurred _____. There was conflicting testimony, with the claimant asserting she was hit hard enough by a freezer door to spin her around, and with other witnesses disputing that contact was made at all. The woman who opened the door said she made eye contact with the claimant as she was opening the door, and if she had been hit by the door, she had to have walked into it. The claimant was observed smoking a cigarette after the purported incident, although she testified that work was very busy that night. The claimant agreed that she had two prior injuries but said she was fully recovered. One was an automobile accident in 1995. A May 1996 MRI reported a C5-6 herniation, probably affecting the nerve root. An October 2000 MRI reported degenerative spurring in the cervical spine, possibly impinging upon nerve roots. This was characterized as mostly chronic in nature.

At the end of the claimant's case in chief, she was asked if she wanted to call another witness at this point. She stated that she would possibly call this witness later. When she did so, the carrier objected for the failure of the claimant to identify this witness, and the claimant could offer no proof that she had exchanged this person's identity, so the hearing officer did not allow her to testify. The hearing officer did not err because Section 410.161 provides that a party may not introduce evidence that has not been identified as required in Section 410.160.

It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was true here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge